

Donald A. Drisdell  
City Solicitor

Nancy E. Glowa  
Deputy City Solicitor

Arthur J. Goldberg  
First Assistant  
City Solicitor



Assistant City Solicitors

Vali Buland  
Paul S. Kawai  
Elizabeth A. Lashway  
Samuel A. Aylesworth  
Amy L. Witts

## CITY OF CAMBRIDGE

Office of the City Solicitor  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

September 22, 2008

Robert W. Healy  
City Manager  
City Hall  
Cambridge, MA 02139

*Re: Awaiting Report No. 08-87 Re: Report on whether a residential unit can have a deed restriction placed on it preventing that unit from ever being able to receive a Cambridge parking permit.*

Dear Mr. Healy:

In response to the above-referenced Awaiting Report, we report the following:

To the extent that the Council Order seeks a response to the question of whether the City has the authority to impose such a deed restriction on privately owned property, the answer is no. The City cannot impose a restriction, for parking or otherwise, on a piece of real property it does not hold title to without the grantor/owner's consent.

Ordinarily, an owner who wishes to sell real property has the right to sell such land subject to a restriction as to its future use and enjoyment as the owner sees fit to impose. See Talty, et al., 5 Massachusetts Practice § 4:49, Drafting and Execution of Deeds. However, courts in Massachusetts do not look with favor on deed restrictions and thus construe the meaning of the restriction in the narrowest terms. In addition, a person with legal title to real property may not enforce a covenant restraining use of land if such a restriction is "not in the public interest." See M.G.L. c. 184, §30; see also, Whitinsville Plaza, Inc. v. Kotseas, 378 Mass. 85 (1979).

To the extent that the Council Order seeks a response to the question of whether an owner of real property could voluntarily impose a deed restriction that would restrict buyers of the real property in question from obtaining a City of Cambridge resident parking permit, we believe that would likely be deemed inconsistent with the public interest as set forth in M.G.L. c. 184, § 30. The authority to impose restrictions on resident parking, including the authority to impose a scheme by which residents can obtain resident parking permits or visitor's passes

rests solely with the Director of Traffic, Parking and Transportation, by virtue of special legislation.

Therefore, it is unlikely that such a deed restriction would be permissible or enforceable.

Very truly yours,

Donald A. Drisdell



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CITY OF CAMBRIDGE  
COMMUNITY DEVELOPMENT DEPARTMENT

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BETH RUBENSTEIN  
Assistant City Manager for  
Community Development

SUSAN M. GLAZER  
Deputy Director for  
Community Development

TO: Robert W. Healy, City Manager

FROM: <sup>jsk</sup> Beth Rubenstein, Assistant City Manager  
for Community Development

DATE: July 17, 2008

RE: Council Order #11 dated June 9, 2008: Report on whether a  
residential unit can have a deed restriction placed on it  
preventing that unit from ever being able to receive a  
Cambridge parking permit

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In response to the above referenced order, we report the following:

The concept referred to above entails restricting who can park in resident parking zones through a deed restriction that would prevent occupants of certain residential properties from getting a parking sticker.

Staff in the Community Development Department has conducted research to determine whether any other jurisdiction in the United States has used deed restrictions to restrict car-ownership or otherwise place limitations of the use of cars owned by people residing in deed-restricted housing. They did not identify any precedents for this approach in another U.S. city.

In addition to potential legal obstacles to such a deed restriction, there are other factors to consider:

Adoption: Developers may be reluctant to impose restrictions on a housing unit that would prevent occupants of such units from parking on the street in residential zones, as the deed restriction would likely impact the value and marketability of the unit by eliminating a benefit available to all other Cambridge residents.

Monitoring: Monitoring of such deed restrictions would be difficult. Each time an individual seeks to obtain a resident parking permit a determination would have to be made by staff as to whether that individual resides in deed-restricted housing. In addition, there would be no practical way of preventing residents who have obtained a resident parking permit, but who subsequently move into deed-restricted housing, from parking in resident parking until end of that calendar year.



Based on the impact on unit marketability and the difficulty of monitoring compliance, we do not consider deed-restricted housing to eliminate the ability to obtain a parking sticker a feasible mechanism for significantly reducing on-street parking in Cambridge. Short of a legal deed restriction, it is helpful to note that developers may, and often do, voluntarily restrict auto ownership by requesting relief from the minimum parking ratios during the permitting process, along with implementing aggressive transportation demand management measures such as subsidized "T" passes, Zipcars and provision of shuttle service